

The Gazette of India



EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 1] NEW DELHI, FRIDAY JANUARY 1, 1954

MINISTRY OF FOOD AND AGRICULTURE

ORDERS

New Delhi, the 30th December, 1953

S.R.O. 52.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the following Orders of the Government of India in the of Food and Agriculture shall stand cancelled with effect from the 1st January 1954, namely:—

1. The Rajasthan and Ajmer Gram and Gram Products (Export Control, Order, 1953; and
2. Gram and Gram Products (Export Control, Order, 1953.

[No. PYII-658(11)/54(1).]

S.R.O. 53.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby makes the following Order:—

1. (1) This Order may be called the Uttar Pradesh Gram and Gram Products (Removal of Control) Order, 1954.

- (2) It extends to the whole of the State of Uttar Pradesh.

- (3) It shall come into force on the 1st January, 1954.

2. Save as otherwise provided in any notified order made by or under the authority of the Central Government under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946) there shall be no prohibition or restriction on the movement of gram and gram products from any place in the State of Uttar Pradesh to any other place within or outside that State and the price, production, movement or distribution of gram and gram products shall not be regulated or controlled in any manner whatsoever.

3. This Order shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act

4. Subject to the provisions of paragraph 2 of this Order, no order—

- (a) made or deemed to be made under the said Act by the Government of Uttar Pradesh or by any officer or other authority; or
- (b) made by the Government of Uttar Pradesh or by any other authority under any other law for the time being in force in the State of Uttar Pradesh:

shall have effect so as to prohibit or restrict the movement of gram and gram products from any place in that State to any other place within or outside that State or so as to regulate or control the price, production, movement or distribution thereof in any manner whatsoever.

[No. PYII-658(11)/54(2).]

S.R.O. 54.—In exercise of the powers conferred by section 4 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the Notification of the Government of India in the Ministry of Food and Agriculture, No. S.R.O. 659, dated the 9th May, 1951 shall stand cancelled with effect from 1st January, 1954.

[No. PYII-658(11)/54(3)]

S.R.O. 55.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby makes the following Order:—

1. (1) This Order may be called the Coarse Grains (Removal of Control) Order, 1954.

(2) It extends to the whole of India except the States of Jammu and Kashmir, Saurashtra and Madhya Bharat and the Gorakhpur Division of the State of Uttar Pradesh.

(3) It shall come into force on the 1st January, 1954.

2. **Definition.**—In this Order, 'coarse grains' means maize, barley, jowar, ba'ragi and other minor millets and includes their products.

3. Save as otherwise provided in any notified order made by or under the authority of the Central Government under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946) there shall be no prohibition or restriction on the movement of coarse grains and their products from any place in a State to any other place within or outside that State and the price, production, movement or distribution of coarse grains and their products shall not be regulated or controlled in any manner whatsoever.

This Order shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act.

4. Subject to the provisions of Paragraph 3 of this Order, no order—

(a) made or deemed to be made under the said Act by the Government of a State or by any officer or other authority; or

(b) made by the Government of a State or by any other authority under any other law for the time being in force in the State.

shall have effect so as to prohibit or restrict the movement of their products from any place in the State to any other place within or outside the State or so as to regulate or control the price, production, movement or distribution thereof in any manner whatsoever.

[No. PYII-656(15)/54.]

S. N BHALLA, Dy. Secy.

The Gazette of India

EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY.

No. 2] NEW DELHI, SATURDAY, JANUARY 2, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd December 1953

S.R.O. 56.—Whereas the elections of Shri Sheo Kumar Pande and Shri Sukhl Ram Bhartiya, as members of the Legislative Assembly of the State of Uttar Pradesh, from the Sirathu-cum-Manjhanpur constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Salig Ram Jaiswal, son of Shri Bisheshwar Prasad Jaiswal, 358, Muthiganj, Allahabad;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT

Sri V. G. Oak, I.C.S.—*Chairman.*

Sri N. N. Mukerji—*Member.*

Sri Baburam Avasthi—*Member.*

ELECTION PETITION No. 318 OF 1952

Sri Salig Ram Jaiswal—*Petitioner.*

versus

Sri Sheo Kumar Pande and 12 others—*Respondents.*

APPEARANCE

Counsel for the petitioner—

1. Sri R. N. Basu.
2. Sri N. N. Mukerji.
3. Sri Balram Lal Srivastava

Counsel for respondent No. 1—

1. Sri Jagdish Swarup.
2. Sri Mahabir Prasad Shukla
3. Sri Mufti Fakhrul Islam.
4. Sri Indar Singh.
5. Sri Mohd Baqar Usmani

Counsel for respondent No. 2—

1. Sri Gopalji Mehrotra.

JUDGMENT

This is an election petition by Sri Salig Ram Jaiswal challenging the election of Sri Sheo Kumar Pande respondent No. 1 and Sri Sukhi Ram Bhartiya respondent No. 2 to the Uttar Pradesh Legislative Assembly from Sirathu-cum-Manjhanpur constituency in Allahabad district. This was a double-member constituency. One of the two seats was reserved for a scheduled caste candidate. The petitioner and the 13 respondents were candidates for the said election. Sri Salig Ram Jaiswal, petitioner, and Srimati Sushila Devi, respondent No. 10, who was a scheduled caste candidate, were candidates set up by the Kisan Mazdoor Praja Party. Their symbols were a hut and a hut within a circle respectively. Sri Sheo Kumar Pande respondent No. 1 and Sri Sukhi Ram Bhartiya respondent No. 2, who was a scheduled caste candidate, were set up by the Congress party. Their symbols were two bullocks with yoke on, and two bullocks with yoke on within a circle respectively. It was declared on 9th February 1952 that respondents No. 1 and 2 had been elected for the two seats in this constituency.

According to the petitioner, the election of respondents No. 1 and 2 is void for various reasons, as given below. Counting of votes was not correctly done. As a matter of fact the petitioner secured a majority of valid votes. During the counting two boxes for respondent No. 1 were found missing. Later on, two boxes for respondent No. 1 were said to have been found out. But ballot papers of these boxes were mixed up with ballot papers of respondent No. 10. Votes were divided at random. Counting of votes was started without counting the number of ballot boxes of each candidate and without getting seals of boxes examined by Counting Agents. Counting of votes from eight different boxes was going on simultaneously at eight different tables. Ballot papers were found arranged serially in bundles. Ballot boxes could easily be opened without tampering with the seals placed on ballot boxes. Ballot papers found at the time of counting were less by 2000 than the ballot papers actually issued to voters used in the constituency. In many cases there were differences in the inner and outer symbols pasted on the ballot boxes. In many cases ballot boxes were without prescribed shellack seals. The prescribed paper seals were of pink colour. But paper seals of white colour were found pasted on a number of boxes. When counting of votes concluded on 9th February 1952, the Returning Officer gave out that the result of the election would be announced next day. But actually the Returning Officer declared the result of the election the same day (9th February 1952). One Sukhdeo Ram Yadav, who is an Inspector of Civil Supplies Department, canvassed for and helped respondents No. 1 and 2 in election. Respondents No. 1 and 2 did not show in their returns of expenses, the money spent by them in connection with meetings addressed by the Chief Minister of Uttar Pradesh. Finally, respondents No. 1 and 2 paid Rs. 100 and Rs. 50 respectively to the Congress Parliamentary Board for getting themselves nominated by the Congress for the election. These two sums were not shown by respondents No. 1 and 2 in their returns of election expenses. The petitioner, therefore, prayed that the election may be declared void in law. Further, the petitioner and respondent No. 10 may be declared as duly elected in the place of respondents No. 1 and 2.

Sri Sheo Kumar Pande respondent No. 1 is the main contesting respondent. He denied that there was any defect in the ballot boxes or any irregularity in the counting. He denied having paid Rs. 100 from his own pocket to the U.P. Congress Parliamentary Board. It was denied that Sri Sukhdeo Ram Yadav canvassed for or helped the respondent No. 1 in his election. It was denied that any money was spent by this respondent in the election meetings addressed by the Chief Minister. It was further pleaded that one Sri Ganga Prasad was a duly nominated candidate. The petitioner did not implead Sri Ganga Prasad in the election petition. So the petition is defective. The petition is vague, is not in proper form, and is in contravention of Section 81 of the Representation of People Act. So the petition is liable to be rejected.

Sri Sukhi Ram Bhartiya respondent No. 2 and Sri Ram Das respondent No. 9 filed separate written statements opposing the election petition. Sri Sukhi Ram Bhartiya raised practically the same pleas as raised by Sri Sheo Kumar Pande. Sri Sukhi Ram Bhartiya further urged that, the petitioner is not entitled to challenge the election of respondent No. 2, who was a scheduled cast candidate.

On these pleadings the following issues were framed:—

ISSUES

1. Is the election petition not in proper form? Is it in contravention of Section 81, R. P. Act? Is it liable to be rejected?

2. Was Sri Ganga Prasad a duly nominated candidate? Is he a necessary party to this election petition? If so, what is its effect?
3. Was the counting of votes irregular and defective as detailed in paragraphs (12), (13), (14), (16), (17), (20), (22), (23) and (24)? Was the result of the election materially affected? Is the petitioner entitled to a scrutiny and re-count of votes? If so, what is the correct number of votes secured by each party?
4. Were ballot boxes defective, as detailed in paragraphs 19, 26 and 27 of the petition? If so, was the result of the election materially affected?
5. Did Sri Sukhdeo Ram Yadav canvass for and help respondents No. 1 and 2 in the election?
6. Is the election petition vague and liable to be rejected?
7. Is the petitioner entitled to challenge the election of respondent No. 2 (a scheduled caste candidate)?
8. Were the returns of election expenses by respondents No. 1 and 2 incorrect as detailed in paragraphs (29) and (30) of the election petition? If so, what is the effect?
9. To what relief, if any, is the petitioner entitled?

FINDINGS

We decided issues No. 1 and 6 on 16th October 1952. We are attaching to this judgment a copy of our order, dated 16th October 1952 as Appendix "A". We decided issues No. 2 and 7 on 13th November 1952. A copy of the order, dated 13th November 1952 is being attached to this judgment as Appendix "B".

Issue No. 3.—The question raised under this issue is whether the counting of votes was irregular and defective for various reasons. The petitioner produced eight witnesses in order to show that, counting of votes was irregular and defective. Sri Radhey Shyam Pathak (P.W. 1) was counting agent for Sri Saligram Jaiswal, and is an interested witness. Shanker Dayal Sinha (P.W. 2) worked as a counting clerk. M. S. Ansari (P.W. 3) was placed in charge of one table during the counting of votes. Sri Nathu Ram (P.W. 4) was a candidate for the scheduled caste seat in this election. Formerly, he was in the Congress. He applied for Congress ticket during the General Election. He mentioned in his application that, he would not stand for election if he was not selected as Congress candidate. He failed to obtain the Congress ticket. He stood for election in spite of the undertaking given in his application to the Congress. Ram Ahakh Tewari (P.W. 5) worked as a counting clerk. Sri Ganga Narain Srivastava (P.W. 8) was a candidate for this election. He is a pleader. Ram Chandra Rajak (P.W. 10) was counting agent for Sri Nathu Ram candidate. P.W. 11 is Sri Saligram Jaiswal, petitioner.

Eleven witnesses were examined for the respondents in order to show that, boxes were in order, and counting of votes took place in a regular manner. Sri T. N. Prasad (D.W. 1) is the Sub-Divisional Magistrate of Sirathu-Manjhanpur. He was the Returning Officer for this constituency. Jai Gopal Misra (D.W. 3) worked as checking clerk during the counting. Sri Ram Das Gupta (D.W. 4) was a candidate for this election. Indrakant Tripathi (D.W. 6) is an Inspector in Rationing Office. Sri Bhatia (D.W. 7) is the Personal Assistant to the Inspector General of Registration. Sri Qasim (D.W. 8) is an Inspector of Stamps. S. N. Pande (D.W. 9) is a clerk in the Public Works Department. These last four witnesses were in charge of different tables during the counting of votes. Badri Prasad (D.W. 10) is a clerk, who worked as checking officer at one table. Sukhdeo Ram Yadav (D.W. 11) also took part in the counting. Srimati Madhuri Srivastava (D.W. 12) is a Deputy Collector. She assisted the Returning Officer in the counting of votes. She prepared forms No. 14. D.W. 17 is Sri Sheo Kumar Pande, respondent No. 1.

Issue No. 3 refers to a number of paragraphs of the election petition. It will be convenient to discuss the various allegations paragraph-wise.

Paragraph 13 of the petition.—The counting of votes in this Constituency started on the 5th of February, 1952, and finished on 9th February 1952. The allegations contained in paragraph 13 are that, two boxes were found missing, while votes for respondent No. 1 were being counted. But Shanker Dayal Sinha (P.W. 2) said that, the missing boxes related to Sri Salig Ram Jaiswal. Sri Nathu Ram (P.W. 4) stated that one box of Tara Chand Jain was missing. On 9th February 1952 Sri Radhey Shyam Pathak (P.W. 1) presented an application Ex. 1 to the Returning Officer that, on 8th February 1952 one ballot box was found with the symbol missing. The symbol for candidate No. 4 was noted inside the box. It

was ordered that, that box would be dealt with later. The Returning Officer dismissed the application Ex. 1 on the ground that, the applicant had not given the number of the polling station. Sri Ram Das Gupta (D.W. 4) admitted that there was a complaint about a missing box. He said that the box related to Tara Chand. It is thus proved that one box was missing at some stage during the counting. But the specific charge made in paragraph 13 of the petition has not been proved.

Paragraph 14 of the petition, wherein it was alleged that on one table ballot papers of respondents No. 1 and 10 were mixed up and were divided at random. We do not find any evidence in support of the allegations contained in paragraph 14 of the petition.

Paragraph 16 of the petition.—There are two separate allegations in paragraph 16. The first charge is that, counting of votes was started without counting the number of the ballot boxes of each candidate. On this point the Returning Officer Sri T. N. Prasad (D.W. 1) said that, before starting the counting, he satisfied himself that all the boxes had been received. He further stated that he arranged the boxes, which had been stored in his court room, on the 30th and 31st of January and on the 1st of February. It took about 15 hours to arrange the boxes during those three days. The boxes were arranged booth-wise separating boxes for the Assembly from the boxes for Parliament candidate-wise. In this election there were 11 candidates, for whom votes were cast. There were 147 ballot boxes for each candidate. Thus there were about 1500 ballot boxes used for this particular election. The work of arranging these 1500 boxes was no doubt laborious. But we doubt if this work should have taken as much as 15 hours.

Rule 46 of R. P. Rules 1951 deals with the procedure to be followed at the counting of votes. Rule 46(1) runs thus: On the date and at the time and place appointed under Rule 44, the Returning Officer shall, before he commences to count the votes, read the provisions of Section 128 to such persons as may be present. He shall then with respect to ballot boxes used at the poll proceed as follows: (1) All the ballot boxes placed for the counting of votes shall be counted and checked.....". This rule requires that all the ballot boxes have to be counted and checked on the date and at the place fixed for the counting of votes. Sri Jagdish Swarup appearing for respondent No. 1 contended that, the rule merely requires that, only those boxes which are taken out of the Store Room at one time and brought to the Returning Officer's table have to be counted and checked. We do not agree. The Returning Officer should not start counting of votes until all the ballot boxes have been counted and checked. That work will not doubt take some time. But the Returning Officer has to devote the necessary time for counting and checking of boxes on the date and at the place fixed for counting. In the present case Sri T. N. Prasad checked and arranged the boxes on certain days before the date fixed for counting. The counting agents had no opportunity to watch Sri T. N. Prasad's proceedings, while he was arranging the boxes on the 30th and 31st of January and the 1st of February. Counting and checking of boxes were not done as laid down in Rule 46(1), R. P. Rules, 1951.

The second charge in paragraph 16 of the petition is that, counting was started without getting the seals of ballot boxes examined by the counting agents of the candidates to find out whether the seals were intact. Sri Radhey Shyam Pathak (P.W. 1) said that the Returning Officer did not permit counting agent's to enter the room, in which ballot boxes were stored. In his application Ex. 1 Sri Radhey Shyam did not complain that, his movements in the counting hall were unnecessarily restricted. Sri Ganga Narain Srivastava (P.W. 8) admitted that he used to go about freely at the place of counting, and the Returning Officer was easily accessible to all candidates. The Returning Officer (D.W. 1) stated that he gave candidates and counting agents all facilities to examine seals. No written application was moved before the Returning Officer on this point. We, therefore, think that candidates and counting agents had reasonable opportunity to examine seals of ballot boxes at the place of counting.

Paragraph 17 of the petition.—The petitioner's grievance is that, counting of votes was being done at eight tables simultaneously. No doubt under the rules counting of votes for one candidate should not be taken up until counting of votes for the previous candidate is finished. But there appears to be no objection for simultaneous counting of votes from different boxes for the same candidate. Simultaneous counting at different tables is admitted. But such counting was not against rules.

Paragraph 20 of the petition.—It has not been shown that the ballot papers found during the counting were less in number than the ballot papers used in the constituency.

Paragraphs 22, 23 and 24 of the petition.—The complaint in these three paragraphs is that, on certain boxes there was difference between the inner and outer symbols pasted on the boxes. The Returning Officer ruled that the outer symbol would be the governing factor. The result was that, votes polled for the petitioner were credited to respondent No. 1, while votes polled for respondent No. 1 were credited to the account of the petitioner. This caused a net loss to the petitioner.

Sri Radhey Shyam Pathak (P.W. 1) stated that there was such confusion of labels for boxes relating to Sipah, Osa, Nagreha and Rakswara polling stations. The petitioner's contention is that, originally the outer and inner symbols tallied. But subsequently outer symbols were exchanged in order to give an advantage to respondent No. 1. The respondent's contention is that, the difference between inner and outer symbols was accidental; and electors cast their votes in accordance with the outer symbols. Sri Radhey Shyam Pathak admitted that ballot boxes relating to Osa, Nagreha, Sipah and Rakswara were not counted near his table. He heard about these defects from others. Sri Nathu Ram (P.W. 4) stated that there was some confusion between the inner and outer symbols with respect to boxes from Rakswara, Osa, Nagreha and Sipah polling stations. He has probably a grievance against the Congress for not giving him the Congress ticket for election. Sri Ganga Narain Srivastava (P.W. 8) stated that there was difference between the outer and inner symbols for one box of polling station Sipah. Details of such differences in outer and inner symbols were given by Ram Chandra Rajak (P.W. 10). He was counting agent for Sri Nathu Ram, and polling agent for Sri Salig Ram Jaiswal, petitioner. According to Ram Chandra Rajak, for one set of ballot boxes from polling station Osa, where the inner and outer symbols differed, 62 votes were credited to the petitioner, and 128 votes were credited to respondent No. 1. For one set of ballot boxes from polling station Rakswara, 101 votes were credited to the petitioner, and 182 votes were credited to the respondent No. 1. For a set of ballot boxes from polling station Nagreha, 138 votes were credited to the petitioner's account, while 243 votes were credited to the account of respondent No. 1. For these three pairs of boxes, 301 votes were credited to the petitioner, while 553 votes were credited to respondent No. 1. For these three sets of boxes respondent No. 1 was given 252 votes more than the votes credited to the petitioner. **This was done on the basis of outer symbols.** If counting were to be done on the basis of inner symbols, the votes would have to be reversed. That is to say, 553 votes would have to be credited to the petitioner, while only 301 votes would be credited to respondent No. 1. According to the Returning Officer's figures, the petitioner obtained 17,526 votes, while respondent No. 1 obtained 17,758 votes. Respondent No. 1 was declared to have been elected with a margin of 232 votes. If the votes for three sets of boxes from polling stations, Osa, Rakswara and Nagreha were to be reversed as suggested by Ram Chandra Rajak, the petitioner's votes would have to be increased by 252, and votes credited to respondent No. 1 would have to be reduced by 252 votes. That would give a majority of votes to the petitioner. If the figures given by Ram Chandra Rajak were accepted, and if we accept the petitioner's theory that the outer symbols were changed after the poll in order to give advantage to respondent No. 1, the result of the poll would go in petitioner's favour. But Ram Chandra Rajak is an interested witness. It was possible for him to take down notes from Form No. 14, and quote the figures before the Tribunal. One cannot, therefore, place much reliance upon Ram Chandra Rajak's deposition.

The Returning Officer (D.W. 1) admitted that in two cases there were differences between inner and outer symbols. In one case the outer symbol was for candidate No. 3 (the petitioner), while the inner symbol was for candidate No. 11 (Smt. Sushila Devi). In another case, the outer symbol was for candidate No. 11 (Smt. Sushila Devi), while the inner symbol was for candidate No. 10 (respondent No. 1). Thus according to the Returning Officer, there was no instance of exchange of symbols as between the petitioner and respondent No. 1. Several officials, who took part in counting and who have appeared as defence witnesses, stated that no case of a difference between inner and outer symbols came to their notice. These statements of the defence witnesses appear surprising, in view of the Returning Officer's admission that there were two such instances of differences between inner and outer symbols. Sri Ram Das Gupta (D.W. 4) also admits one such instance. He made a written application Ex. B in that connection. It was stated in the application Ex. B that, for one box there was no outer symbol, and the inner symbol was for candidate No. 10 (respondent No. 1). With respect to the same box (polling station No. 45 Rakswara—booth No. 1) Sri Sukhi Ram Bhartiya moved a separate application Ex. 12 before the Returning Officer. In this application Ex. 12 it was suggested that, the box credited to Sri Sheo Kumar Pande should be credited to Smt. Sushila Devi, and the box credited to Smt. Sushila Devi should be credited to the account of Sri Sheo Kumar Pande. From Form No. 14 we find that, 26 votes were credited to the account of Sri Sheo Kumar Pande, for booth

No. 1 of polling station No. 45, while 177 votes were credited to the account of Smt. Sushila Devi for the corresponding box for the same booth of polling station Rakswara. This application Ex. 12 was written by Sri Sheo Kumar Pande respondent No. 1 on behalf of Sri Sukhi Ram Bhartiya respondent No. 2. The Returning Officer disallowed the application Ex. 12. Had the Returning Officer allowed the application Ex. 12 written by respondent No. 1, Sri Sheo Kumar Pande would have got an advantage of 151 votes. Respondents produced Sri Shambhu Nath Upadhyaya (D.W. 15) to show how the difference between inner and outer symbols is to be accounted for. Such defect was noticed with respect to polling station Rakswara. Sri Upadhyaya was Presiding Officer at Polling station Rakswara. So the Returning Officer called for his explanation. Sri Upadhyaya submitted his explanation Ex. F. In this explanation Sri Upadhyaya suggested that, wrong labels might have been pasted on some boxes due to insufficient light at the time of pasting these symbols. But the outer symbols were properly pasted. Electors voted in accordance with outer symbols. Sri Upadhyaya admitted that, such differences between inner and outer symbols were possible for one or two boxes only. According to the petitioner, such differences were noticed in the case of a large number of boxes.

It is proved that in some boxes there were differences between inner and outer symbols. But it has not been proved that there was an organised exchange of outer labels of the petitioner and respondent No. 1. Any way, in our opinion, it would have been much better if the Returning Officer had ordered a repoll at these polling stations.

Paragraph 12 of the petition, wherein it was asserted that votes were not correctly counted and in fact the petitioner secured a majority of valid votes. According to Sri T. N. Prasad, Returning Officer, counting was properly done. Form No. 14 was prepared by Srimati Madhuri Srivastava (D.W. 12). Counting Officers used to bring check slips along with ballot papers to her. She used to fill up forms No. 14 from the figures noted in the check slips. She thinks that she made the totals in Form No. 14, correctly. After making the totals, she handed over these forms to the Returning Officer for checking the totals. Srimati Srivastava pointed out before the Tribunal that, in their present condition Forms No. 14 for different candidates contain 22 alterations, which were not made by her. There are four such unauthorised alterations in Form No. 14 for the petitioner, and thirteen unauthorised alterations in Form No. 14 for respondent No. 1. Small paper slips have been pasted at a number of places on Forms No. 14. At places figures have been rubbed away and re-written. Srimati Srivastava thinks that these unauthorised alterations were not made by the Returning Officer. In spite of these alterations in Forms No. 14, there has been no substantial change in the figures originally written by Srimati Srivastava. The totals for different candidates have remained unaltered. One packet Ex. E, containing ballot papers for the petitioner for booth No. 2 of polling station No. 9 (Kaini) was examined during Srimati Srivastava's cross-examination. We found 6 ballot papers in this packet. The figure noted in Form No. 14 is also 6. But the figures noted in the check slip are: " $53+A/53=106$ ". Srimati Srivastava thinks that, the original entry in the check slip was " $3+A/3=6$ ". Somebody has now altered that entry.

Sri R. N. Basu appearing for the petitioner drew our attention to similar discrepancies in certain other packets. Sri M. P. Shukla, appearing for respondents objected that, these packets should not be used in evidence, as the petitioner never tendered these packets in evidence. There is no force in this contention. Ballot paper used in this election and other records were summoned by this Tribunal from the Returning Officer in September 1952. To the knowledge of respondents, the petitioner devoted several days in inspecting the ballot papers and other records. Respondents could well expect that, the petitioner might make use of these ballot papers and other records. The petitioner was entitled to compare the contents of packets of ballot papers with the entries in Form No. 14 in order to show that, counting was not correctly done. Five packets of Ballot papers examined by us during the course of arguments have been marked as Exs. 13 to 17.

Ex. 17 is the packet containing ballot papers for Sri Sheo Kumar Pande for booth No. 1 of polling station No. 14 (Bhaduan). We found 35 ballot papers in this packet. The figure 35 has been noted in the check slip also. But the corresponding figure noted in Form No. 14 is 335. There is some over-writing in the first '3' of the figure '335'. Thus we find that the figure noted in Form No. 14 exceeds the number of ballot papers in the packet by 300.

Ex. 13 is the corresponding packet for Sri Salig Ram Jaiswal (booth No. 1 of polling station No. 14—Bhaduan). In this packet Ex. 13 we found 153 ballot papers divided into two bundles of 100 and 53 ballot papers. But the figure noted

in the check slip is: " $184+153=337$ ". The corresponding figure noted in Form No. 14 is 37. Thus the figures noted in Form No. 14 and the check slip and the actual number of ballot papers in the packet are all different. The figure noted in Form No. 14 is less than the actual number of ballot papers in the packet by 118.

Ex. 16 is the packet for Sri Sheo Kumar Pande for booth No. 2 of polling station No. 9 (Kaini). We found 84 ballot papers in this packet. The figure '84' is noted on the check slip also. But the figure given in Form No. 14 is 184. Thus the figure noted in Form No. 14 exceeds the actual number of ballot papers by 100.

Thus we find that there is a total excess of 400 votes noted in Form No. 14 in the name of respondent No. 1 with respect to booth No. 1 of polling station No. 14 and booth No. 2 of polling station No. 9. If the entries of Form No. 14 are to be brought in a line with the actual number of ballot papers, the grand total of votes in favour of Sri Sheo Kumar Pande will have to be reduced by 400. On the other hand, the grand total of the petitioner as noted in Form No. 14 will have to be increased by 118. That would bring about a difference of 518 votes in favour of the petitioner and against respondent No. 1. We have already mentioned that, on the calculation of the Returning Officer, respondent No. 1 won the election by a majority of 232 votes, only. Thus the alterations in the two totals as indicated above would give the petitioner a majority of votes.

According to the petitioner, the incorrect entries and unauthorised alterations in Form No. 14 were made during the process of counting. On the other hand Sri Jagdish Swarup appearing for respondent No. 1 argued, that all the entries were properly made upto the stage of declaration of the result on 9th February 1952. He contended that the election records were tampered with at the instance of the petitioner after the ballot papers and other records came to the custody of the Election Tribunal. It was pointed out that the petitioner's worker Phool Lal applied for inspection of election records in February 1952. But he made no complaint about interpolations in Form No. 14. Under Rule 52(1) R.P. Rules, 1951, the packets of ballot papers could not have been inspected after 9th February 1952 without an order of a competent court or this Tribunal. There was, therefore, little opportunity for tampering with packets of ballot papers after 9th February 1952. We took all possible precautions for safe custody of the ballot papers and election records, when they reached the custody of this Tribunal, in September 1952. It was, therefore, very difficult to tamper with these materials after September 1952. It appears more probable that there was tampering with the election records, while they were still in the custody of the Returning Officer. In view of the large number of unauthorised alterations made in Form No. 14 and discrepancies in the number of ballot papers contained in different packets, the figures noted in the check slips and the figures noted in the Forms No. 14, it must be held that counting of votes was not correctly done.

The next question for consideration is whether the petitioner has secured a majority of valid votes. The Forms No. 14 were written up by a responsible officer. If the totals given in Forms No. 14 are accepted, respondent No. 1 would appear to have obtained a majority of votes. On the other hand figures in Form No. 14 were copied out from figures noted in check slips. Figures in check slips were written from the number of ballot papers found in ballot boxes. The actual number of ballot papers is the ultimate basis for deciding the result of an election. If we accept that the packets Exs. 13, 16 and 17 are in their original condition, the petitioner would appear to have received the majority of votes. Since we cannot be sure at what particular stage tampering took place, it cannot be said with certainty that either the petitioner or respondent No. 1 secured the majority of votes. The matter must be referred to the Electorate for a fresh verdict.

The second part of issue No. 3 is: "Was the result of the election materially affected?" We have shown above that there was irregularity in counting and checking of ballot boxes at the commencement of the counting. But this irregularity does not appear to have materially affected the result of the election. Again, there were differences in inner and outer symbols for certain ballot boxes. But we do not definitely know the origin of these differences between the outer and inner symbols. It has not definitely been shown that, any such difference between outer and inner symbols worked out to the disadvantage of the petitioner. The petitioner has not succeeded in proving that, the differences between inner and outer tablets of certain boxes affected the result of the election materially.

But the defect in actual counting was far more serious. We have shown above that, there is some ground for believing that actually the petitioner might have received majority of votes, if counting had been done properly. We, therefore, hold that the defective counting votes affected the result of the election materially, as regards the election of respondent No. 1.

It is admitted in the petition that, Sri Sukhi Ram Bhartiya, respondent No. 2 obtained 17,521 votes, while Smt. Sushila Devi, respondent No. 10 received 11,577 votes. Thus respondent No. 2 won the election by a margin of 5,944 votes. The petitioner did not point out any serious defects as regards the contest between respondents Nos. 2 and 10. The irregularities noticed above were not likely to wipe out the majority of nearly 6,000 votes in favour of respondent No. 2. We, therefore, hold that the result of the election was not materially affected as regards respondent No. 2.

The last part of issue No. 3 is: "Is the petitioner entitled to scrutiny and re-count of votes? If so, what is the correct number of votes secured by each party?" At the time of framing of issues, the petitioner pressed for scrutiny and re-count of votes. The respondents then opposed the petitioner's claim for scrutiny and re-count of votes. During the final arguments Sri R. N. Basu, appearing for the petitioner, did not press for scrutiny and re-count of votes. On the other hand Sri M. P. Shukla, appearing for respondents, suggested a scrutiny and re-count of votes. Had there been a reasonable chance of finding out, with some accuracy, whether the petitioner or the respondent No. 1 actually obtained the majority of votes, we would have agreed to a re-count of votes for all the packets of these two candidates. But we have pointed out that, there were serious defects in the counting. Had there been a mere clerical error in counting, such error could be corrected by a re-count. But in the present case we are dealing with fraud and not accidental errors. A re-count will not reveal whether the petitioner or respondent No. 1 actually obtained the majority of votes. We, therefore, hold that the petitioner is not entitled to a scrutiny and re-count of votes, and it is not possible to give the correct number of votes secured by the petitioner and the respondent No. 1.

Issue No. 4.—The question is whether ballot boxes were defective as alleged in paragraphs 19, 26 and 27 of the petition.

Paragraph 19 of the petition.—It is alleged by the petitioner that, the ballot boxes could easily be opened without tampering with the seals put on the ballot boxes. Shanker Dayal Sinha (P.W. 2) stated that a ballot box could be opened without breaking the seal of the pink paper. The most important witness for the petitioner on this point is Jai Singh (P.W. 9). He gave before the Tribunal two demonstrations for opening a ballot box without breaking the seal. In the first demonstration, the shellac seal was placed on the knot of the thread. Jai Singh admitted that he could not open the ballot box in that condition without breaking the shellac seal. Jai Singh however, opened the box without damaging the paper seal, after breaking the shellac seal. In the second demonstration, the shellac seal was fixed at a distance of two and a half inches from the knot of the thread. Jai Singh, with the help of two needles, succeeded in opening the box in five minutes with the seals intact. Jai Singh admitted that he would not be able to open the box, if the distance of the seal from the knot is less than two-and-a-half inches.

In view of the demonstrations given by Jai Singh witness, the respondents led evidence to show that there were instructions during the election for fixing the seal as close to the knot as possible. Sri Laghate (D.W. 14) is the present District Election Officer. He said that the rule was to fix the shellac seal as close to the knot as possible. Sri Laghate did not inspect the ballot boxes used in Sirathu-Majhanpur constituency after they had been sealed. No written instructions were issued prescribing the distance between the seal and the knot. Ballot boxes used in this district were "Godrej" boxes. Ex. 10 are instructions issued by the manufacturers of these boxes. In instruction No. 6 of Ex. 10 it is laid down: "affix Presiding Officer's seal on the loose ends of the thread without covering up the knot". This instruction contained in Ex. 10 does not support Sri Laghate's statement that, the rule was to fix the shellac seal as close to the knot as possible. Since there were no written instructions for placing the seal as close to the knot as possible, seals fixed on a number of ballot boxes must have been at some distance from the knot. If this distance was two-and-a-half inches or more, it was possible to open the ballot box without breaking the seal as demonstrated by Jai Singh (P.W. 9). But the task was not easy. It required some skill to open the ballot box without breaking the seals. Sri Laghate stated that in the bye-election of May, 1953 the ballot boxes had no cords under the lids. It appears that authorities realised that, it was not safe to have cords under the lids as was done in the General Elections of January 1952. We, therefore, hold that if there was a big gap between the shellac seal and the knot of the thread, it was possible to open the ballot box without tampering the shellac seal. But the task was difficult. We do not think that, the fact that a person possessing special mechanical